Oct 14. 1873. Supt Q Office. A.N.S

1-656

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~304~~ 83

THE NEW-LAMP-CHIMNEY COMPANY, PLAINTIFF IN ERROR,

vs.

THE ANSONIA BRASS AND COPPER COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

FILED OCTOBER 25, 1873.

SUPREME COURT OF THE UNITED STATES.

No. 304.

THE NEW-LAMP-CHIMNEY COMPANY, PLAINTIFF IN ERROR,

vs.

THE ANSONIA BRASS AND COPPER COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

INDEX.

	Original.	Print.
Writ of rror	1	1
Clerk's certificate	4	1
Summons	5	2
Complaint	6	2
Answer	8	3
Supplemental answer	10	4
Verdict	35	21
Judgment	36	22
Judgment in general term	38	23
Clerk's certificate	42	24
Proceedings in court of appeals	43	24
Judgment	44	24
Citation	47	25
Service	48	26
Bond	50	26
Assignment of error	53	28
Joinder	55	29

1 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the justices of the supreme court of the State of New York, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea, which was in the court of appeals of the State of New York, before the judges thereof or some of them, which is the highest court of law or equity of the said State, in which a decision could be had in the said suit between the Ansonia Brass and Copper Company, a corporation created under the laws of the State of Connecticut, respondent, and the New-Lamp-Chimney Company, a corporation created under the laws of the State of New York, appellant; wherein was drawn in question the construction of a clause of a statute of the United States, and the decision was against the title, right, privilege, or exemption specially set up and claimed by said New-Lamp-Chimney Company, under such clause of said statute, a manifest error hath happened, to the great damage of the said New-Lamp-Chimney
2 Company, as by their complaint appears, and the said record and proceedings having been remitted by said court of appeals to you, the said justices of said supreme court of said State, and we being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all concerning the same to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Nathan Clifford, associate justice of the Supreme Court of the United States, next in precedence to the Chief-Justice of the said Supreme Court, the 29th day of Sept., in the year of our Lord one thousand eight hundred and seventy-three, and of
3 the Independence of the United States the ninety-seventh.

KENNETH G. WHITE, *Clerk.*

Allowed by—
WARD HUNT.

(Indorsed:) Supreme Court U. States. The New-Lamp-Chimney Company, plaintiff in error, vs. The Ansonia Brass and Copper Co'p'y, defendant in error. Writ of error. John M. Martin, atty. for plff. in error, 51 William st., N. Y. Filed Sept. 30, 1873.

4 The answer of the justices of the supreme court of the State of New York, first judicial department, in and for the city and county of New York, in the within writ mentioned, the proceedings whereof mention is within made, with all things touching the same are hereby respectfully certified to the justices of the Supreme Court of the United States within mentioned, in a certain schedule to this writ annexed, as within it is commanded.

Witness David P. Ingraham, chief justice of the supreme court of the city of New York, at the court-house of said city, the 8th day of October, A. D. 1873.

[SEAL.] CHAS. E. LOEW, *Clerk.*

5 Supreme court, city and county of New York.

THE ANSONIA BRASS AND COPPER COMPANY
against
THE NEW-LAMP-CHIMNEY COMPANY.

To the defendants:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said complaint on the subscriber, at his office, No. 22 Pine street, in the city of New York, within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this action will take judgment against you for the sum of five thousand two hundred and sixty-six $\frac{94}{100}$ dollars, with interest from the eighteenth day of May, one thousand eight hundred and seventy, besides the costs of this action.

SAMUEL B. HIGENBOTHAM,
Plaintiff's Attorney.

Dated December 1, 1870.

6 Supreme court, city and county of New York.

THE ANSONIA BRASS AND COPPER COMPANY
against
THE NEW-LAMP-CHIMNEY COMPANY.

The complaint of the above-named plaintiffs respectfully shows to the court that the plaintiffs and defendants, respectively, are incorporators duly created and existing under the laws, and

Second. That the defendants, at the city of New York, on the twenty-ninth day of March, A. D. 1870, made their two promissory notes in writing, bearing date on that day, by one whereof they promised to pay to the order of the plaintiff, sixty days after date, the sum of five hundred and thirteen $\frac{73}{100}$ dollars; and by the other thereof they promised to pay to the order of the plaintiff, ninety days after date, the sum of five hundred and sixteen $\frac{27}{100}$ dollars, respectively, for value received; and then and there delivered the same to the plaintiffs.

Third. And the defendants, at the city of New York, on or about the dates following, made their seven other promissory notes in writing, bearing the dates following, by each whereof they promised to pay to the order of the American Lamp and Lantern Company, which was and is a duly incorporated company, the several sums following respectively, for value received, that is to say:

February 14, 1870, sixty days after date	$759 19
March 15, 1870, sixty days after date	511 46
March 19, 1870, three months after date	254 52
March 17, 1870, three months after date	753 67
April 6, 1870, sixty days after date	683 27
April 6, 1870, sixty days after date	253 06
April 6, 1870, sixty days after date	1,012 25

7 and then and there delivered the same to the said American Lamp and Lantern Company.

Third. That the last-named company endorsed and delivered the said several notes to these plaintiffs before the maturity thereof.

Fourth. That the plaintiffs are now the lawful owners and holders of the said nine several promissory notes; that although the same became due and payable before the commencement of this action, the defendants have not paid the same, nor any part thereof, and the defendants are thereupon justly indebted to the plaintiffs upon the said several promissory notes in the sums following, namely;

$516.27, and interest from the second July, 1870.
513.73 " " " first June, 1870.
759.19 " " " seventeenth April, 1870.
511.46 " " " eighteenth May, 1870.
254.52 " " " twenty-second June, 1870.
753.67 " " " twentieth June, 1870.
683.27 " " " ninth April, 1870.
253.06 " " " " " "
1,012.25 " " " " " "

Fifth. Plaintiffs further show that the said seven promissory notes, made to the American Lamp and Lantern Company, were duly protested at maturity for non-payment, and the plaintiff laid out and expended for notaries' fees, stamps, notices, and postage in and about such several protests the sum of one dollar and thirty-six cents, making a total of $9.52.

Sixth. Wherefore the plaintiffs claim judgment against the defendants for the sum of five thousand two hundred and sixty-six dollars and ninety-four cents, for principal and cost of protest, and interest from the eighteenth day of May, 1870, (which is the average date of maturity,) together with the costs of this action.

SAMUEL B. HIGENBOTHAM.
Plaintiff's Attorney.

8 CITY AND COUNTY OF NEW YORK, *ss:*

George P. Coles, being duly sworn, saith that he is treasurer of the Ansonia Brass and Copper Company, plaintiffs in the above-entitled action, and that the foregoing complaint is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters he believes it to be true.

GEORGE P. COLES.

Sworn to before me this 1st day of December, 1870.
EDWIN H. COREY,
Commissioner of Deeds.

Answer.

New York supreme court.

THE ANSONIA BRASS AND COPPER COMPANY
against
THE NEW-LAMP-CHIMNEY COMPANY.

The answer of the above-named defendants to the plaintiff's complaint in this action respectfully shows to this court:

I. That they admit that the defendants are a corporation, duly created and existing under the laws.

II. They admit the making of the several promissory notes mentioned in the complaint herein.

III. And for a third defence to said action these defendants further say, that on or about the eleventh day of May, 1870, these defendants filed their petition in the office of the clerk of the United States district court for the southern district of New York, to be adjudged bankrupt under the "act of Congress to establish a uniform system of bank-
9 ruptcy throughout the United States," approved March 2d, 1867, and that subsequently to said filing of said petition, and before the commencement of this action, these defendants were adjudged bankrupt by an order issued out of said district court. That annexed to said petition and filed therewith was a schedule of the debts and liabilities of these defendants, and that the claims of the above named plaintiff were duly set forth in said schedule, and included among said debts.

That the plaintiffs as creditors of these defendants have proved their debts or claims against these defendants, created by said notes, before the register in bankruptcy having charge of the proceedings under said petition, and that under and by virtue of said act said plaintiffs have thereby waived all right of action and suit against these defendants upon said promissory notes, or any or either of them.

Wherefore these defendants demand judgment against the said plaintiffs, that the complaint herein be dismissed with costs.

MARTIN & KING,
Defendants' Attorney.

CITY AND COUNTY OF NEW YORK, *ss:*

EDWARD S. DODGE, being duly sworn, says he is the treasurer of the above-named defendants; that the foregoing answer is true to his own knowledge, except as to the matters therein mentioned to be on information and belief, and as to those matters he believes it to be true.

E. S. DODGE.

Sworn to before me this 31st day of January, 1871.

SAMUEL P. BELL,
Notary Public, New York City and County.

10 *Supplemental answer.*

New York supreme court.

THE ANSONIA BRASS AND COPPER COMPANY
against
THE NEW-LAMP-CHIMNEY COMPANY.

The defendants in this action, by Martin & King, their attorneys, as and for a supplemental answer and fourth defence to the several promissory notes and causes of action set forth in the complaint therein, by leave of the court first had and obtained, further show to this court, on information and belief, that since the making and service of a copy of the defendants' original answer to said complaint, the assignee duly chosen and appointed under the proceedings in bankruptcy, mentioned in the third subdivision of defence of said original answer, has paid dividends out of the assets or property of these defendants, which came to his hands as such assignee, under said proceeding, to the plaintiffs, as the owners of said promissory notes, in the aggregate sum of $262.10, or thereabouts, which sum the plaintiffs received as proportionate and part

payment of the several amounts proved and claimed to be due on said notes in said proceedings in bankruptcy.

MARTIN & KING,
Defendants' Attorneys.

STATE OF NEW YORK,
City and County of New York, ss :

EDWARD S. DODGE, being duly sworn, says he is the treasurer of the above-named defendants; that the foregoing answer is true to his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

E. S. DODGE.

Sworn to before me this 20th day of January, 1872.
SAMUEL JOHN STORRS,
Notary Public, City and County of New York.

11 At a special term of the supreme court, held at the city of New York on the fifteenth day of January, A. D. 1872.

Present: Hon. George C. Barrett, justice.

THE ANSONIA BRASS AND COPPER COMPANY
against
THE NEW-LAMP-CHIMNEY COMPANY.

NATHANIEL S. BAILEY
against
THE NEW-LAMP-CHIMNEY COMPANY.

On hearing Mr. Higenbotham for the plaintiffs, and Mr. Martin for the defendants, leave is given to the defendants to serve, within five days, a supplemental answer setting up any alleged payments made to the plaintiffs since service of their original answers; and the plaintiffs shall admit as a fact all payments which shall appear by the record of certain proceedings in bankruptcy, set up in the said answers of the defendants, now on file in the office of the chief clerk in bankruptcy in the United States district court for the southern district of New York, to have been made to them or either of them, on account of the demands stated in the complaint.

And it is further ordered that the two actions entitled as above, now standing on the general calendar as Nos. 2803 and 2842, with such further issues as may be presented by any supplemental answer above allowed, be forthwith placed on the special circuit calendar for trial, as short causes.

Ent'd G. C. B.

12 N. Y. supreme court.

THE ANSONIA BRASS AND COPPER COMPANY, plaintiffs,
against
THE NEW-LAMP-CHIMNEY COMPANY, DEFENDANTS.

The action came on for trial, and was tried before the honorable George C. Barrett and a jury, on the 8th day of March, 1872.

S. B. Higenbotam appeared as counsel for the plaintiffs, and John M. Martin as counsel for the defendants.

The plaintiffs' counsel produced the nine promissory notes mentioned in the complaint, amounting in the whole, with interest, to the sum of $5,921.94, upon which he admitted that in certain proceedings in bankruptcy against the defendants in the United States district court for the southern district of New York, the plaintiffs, as defendants' creditors, had received dividends amounting to 262.10, and claimed a balance of $5,659.84 on the notes herein, and rested his case.

The defendants' counsel, after stating the nature of the defence produced from the files of the United States district court aforesaid, the whole of the original papers and proceedings in bankruptcy against the defendants, including the petition and all the subsequent proceedings on file in the office of the clerk of said court, and offered the same in evidence, whereupon the plaintiffs' counsel admitted that such papers were the originals filed in the office of the clerk of said court in said proceedings in bankruptcy, but objected to them as evidence in this action on the ground that they were not an official record of any proceedings of any court. That it did not appear that the said United
13 States district court had any jurisdiction in the alleged matter, because it did not appear that the petition or proceedings were authorized by a majority of the stockholders of New-Lamp-Chimney Company, at a duly convened meeting, according to the provisions of the bankrupt act, but, on the contrary, it did appear that said proceedings were authorized, if at all, only by the trustees of said company.

Defendants' counsel claimed that the resolution of the trustees was sufficient to warrant the proceedings.

The court overruled the objection, and admitted the papers and proceedings as an original record of the said district court.

Defendants' counsel then admitted that all the assets had been administered, paying about five per cent., and the assignee had been discharged, and then read the record to the court and jury, as follows, to wit:

First. The petition and a certificate or statement accompanying it, authorizing the proceedings in the name of the trustees.

Second. Schedule A, No. 3, annexed to said petition, containing the names of the creditors.

Third. The oath to schedule A.

Fourth. Schedule B, No. 2, annexed to said petition, being an inventory of the personal property of the bankrupt.

Fifth. Schedule B, No. 3, annexed to said petition, being a statement of debts due petitioners on open account.

Sixth. Schedule B, No. 3, annexed to said petition, being policies of insurance belonging to said bankrupt.

Seventh. Schedule B, No. 3, annexed to said petition, being a statement of the books of the bankrupt.

Ninth. The oath to schedule B.

Tenth. The order adjudging defendants bankrupt.

Eleventh. The plaintiffs' proofs of debts against the bankrupt, before the register, based on the notes sued on in this action.

14 Twelfth. The appointment of assignee in said proceedings in bankruptcy.

Thirteenth. His acceptance of the office of assignee aforesaid.

Fourteenth. Paper showing payments of dividends to the plaintiffs by the assignee, on such debts.

Fifteenth. Receipts for such payments, signed by the plaintiffs.

EXHIBIT No. 1.

To the Hon. Samuel Blatchford, judge of the district court of the United States for the southern district of New York.

The petition of New-Lamp-Chimney Company, a corporation established under the laws of the State of New York, in the city and county of New York, and district aforesaid,

Respectfully represents, That said corporation has been located and doing business for more than six months next immediately preceding the filing of this petition, at No 34 Cliff st., in said city, within said judicial district, and owes debts exceeding the amount of three hundred dollars, and is unable to pay all of the same in full; that said corporation is willing to surrender all the estate and effects thereof for the benefit of its creditors, and desires to obtain the benefit of the act entitled, "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

That the schedule hereto annexed, marked "A," and verified by your petitioner's oath, contains a full and true statement of all the debts of said corporation, and (as far as it is possible to ascertain) the names and places of residence of the creditors thereof, and such further statements concerning said debts as are required by the provisions of said act.

That the schedule hereto annexed, marked "B," and verified by your petitioner's oath, contains an accurate inventory of all the estate of said corporation, both real and personal, assignable under the provisions of said act.

Wherefore your petitioner prays that said corporation may be adjudged by the court to be bankrupt within the purview of said act; and that like proceedings may be had in the premises as in said act are provided in respect to rational persons.

JOHN C. DODGE,
Pres't, Petitioner.

JOHN M. MARTIN,
Attorney for Petitioner.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John C. Dodge, president of said corporation, the petitioner mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true, according to the best of my knowledge, information, and belief; and I do further make oath that I am a citizen of the United States of America, and that I bear true faith and allegiance to the same.

JOHN C. DODGE,
Pres't, Petitioner.

Subscribed and sworn to before me this 11th day of May, 1870.
JOHN A. SHIELDS,
U. S. Commissioner, Southern District N. Y.

16 CORPORATION PETITION.

Statement to accompany petition of corporation.
(*In bankruptcy.*)

At a meeting of the trustees of the New-Lamp-Chimney Company, a corporation created by and under the laws of the State of New York, held at No. 34 Cliff street, in the city and county and State of New York, on this ninth day of May, A. D. 1870:

The condition of the affairs of said corporation having been inquired into, and it being ascertained to the satisfaction of said meeting that said corporation was insolvent, and that its affairs ought to be wound up, it was voted and resolved by a majority of the trustees present at such meeting, (which was duly called and notified for the purpose of taking action upon the subject aforesaid,) that John C. Dodge, the president of said company, be, and he was thereby, authorized, empowered, and required to file a petition in the district court of the United States for the southern district of the State of New York, within which the said corporation has carried on its business, for the purpose of having the same adjudged bankrupt, and that such proceedings be had thereon as are provided by the act of Congress entitled, "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

In witness whereof I have hereunto subscribed my name as secretary of said corporation, this ninth day of May, A. D. 1870.

[SEAL.] E. S. DODGE,
Secretary.

SCHEDULE A, 3—(As approved.)

In the matter of the New-Lamp-Chimney Company, bankrupt.

Creditors whose claims are unsecured.

Reference to ledger or voucher.	Names of creditors.	Residences and occupation.	Amount. Dolls. cts.	When and where contracted.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, &c., and whether contracted as co-partner or joint-contractor with any other person, and, if so, with whom.
	Bay State Glass Co.....	Glass-manufacturing, Boston, Mass.	940 05	Boston, Mass., Feb. 15, Feb. 16, & May 5, '70.	3 promissory notes, given for 1 and 2 months, for goods purchased of Co.
	J. & J. Eager.....	Liquor-dealers, 34 Cliff street.	233 75	New York City, March 7, 1870.	For rent—promissory note, payable in 30 days, given therefor.
	A. Thiery & Co.....	Glass-manufacturers, Brooklyn, N. Y.	351 83	Brooklyn, Feb. 11, and March 16, 1870.	For goods purchased—promissory notes given therefor.
	Am. Lamp & Lant. Co., F. A. Hunt, Pres.	Lamp-dealers, c. Warren & College Pl, N. Y.	4,982 79	N. Y. City, between Oct. 7, '69 & May 1, '70.	For goods purchased—promissory notes given therefor.
	Ansonia Brass and Copper Company.	Brass-manufacturers, 19 Cliff st., N. Y. City.	1,030 00	New York City, between Sept. 1, 1869, and May 1, 1870.	For goods purchased of Am. Lamp and Lantern Company, and the notes of the New Lamp-Chimney Company given to Ansonia Brass Company in payment therefor—the notes having been endorsed by American Lamp & Lantern Company.
	Storm Bro's.....	Glass-manufacturers, Philadelphia, Pa.	1,442 95	Phila., Penn., bet. Jan. 17, '70, & May 5, '70.	For goods purchased – 5 promissory notes given therefor.
	E. P. Gleason.....	Glass-dealer, 135 Mercer st., N. Y. City.	51 34	New York City, March 17, 1870.	For goods purchased—promissory note payable April 19, 1870, given therefor.
	American Hot Cast Porcelain Co.	Porc. M'f's, cor. Warren & Church, N. Y. City.	272 10	New York City, April 1, 1870.	For goods purchased—2 promissory notes, at 30 and 60 days, given therefor.
	E. Miller & Co.....	Meriden, Conn., Brass & Copper M'f's.	1,440 46	Meriden, Conn., bet. Feb. 1 & April 1, '70.	For goods purchased—4 promissory notes given therefor.
	Illinois Manufacturing Company.	Chicago, Ill., Lantern-manufacturers.	203 40	Chicago, Ill., Jan. 28, 1870.	For goods purchased—promissory notes at 3 months given therefor.

JOHN C. DODGE, *President, Petitioner.*

SCHEDULE A 3—(Continued.)

In the matter of the New-Lamp-Chimney Company, bankrupt.

Creditors whose claims are unsecured.

Reference to ledger or voucher.	Names of creditors.	Residence and occupation.	Amount. Dolls. cts.	When and where contracted.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, &c., and whether contracted as co-partner or joint-contractor with any other person, and, if so, with whom.
	A. D. Kirk	Tailor, 48 Fulton st., New York.	150 00	New York City, March 25, 1870.	For money borrowed by company from Kirk—promissory note, payable in 30 days, given therefor.
	F. H. Lovell & Co	Lamp-dealers, No. 233 Pearl st., N. Y.	389 97	New York City, March 5, 1870.	For goods purchased—promissory note, dated March 5, 1870, payable in 60 days, given therefor.
	Duflinger Glass Co	Glass-manufacturers, 6 Murray street.	2,361 73	New York City, bet. Feb. 4 and May 1, '70.	For goods purchased—6 promissory notes given therefor.
	E. Miller & Co	Lamp-dealers, corner Church & Chambers streets, N. Y.	211 63	New York City, March 1, 1870.	For goods purchased—promissory note, payable in 3 months, given therefor.
	Bridgeport Brass Co	Brass-manufacturers, 62 John street.	322 33	New York City, March 18, 1870.	For goods purchased—promissory note, at 3 months, given therefor.
	J. A. Vose, agent of American Advertising Company.	Advertising agency, 25 Fulton st., N. Y.	335 00	New York City, March 1, 1870.	For advertising—2 promissory notes, dated March 1, 1870, at 2 and 3 months respectively, given therefor.
	C. E. Young	Iron-manufacturer, Buffalo, N. Y.	64 09	Buffalo, N. Y., April 14, 1870.	For goods purchased—promissory note, payable in 2 months, given therefor.
	Meriden Malleable Iron Company.	Iron-manufacturers, West Meriden, Conn.	305 42	West Meriden, Conn., April 2 & May 2, '70.	For goods purchased—2 promissory notes, at 3 months, given therefor.
	Edward S. Dodge.	Printer, 84 John st., N. Y.	3,500 00	New York City, bet. Jan. 10 and Jan. 18, 1870.	For money loaned by Dodge to company—3 promissory notes, payable, 2 at 30 and 1 at 60 days, given therefor.

JOHN C. DODGE, *President, Petitioner.*

SCHEDULE A 3—(Continued.)

In the matter of the New-Lamp-Chimney Company, bankrupt.

Creditors whose claims are unsecured.

Reference to ledger or voucher.	Names of creditors.	Residences and occupation.	Amount. Dolls. cts.	When and where contracted.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, &c., and whether contracted as co-partner or joint-contractor with any other person, and, if so, with whom.
	Taylor Manufacturing Company.	Lamp M'f'rs, 73 Beekman st., N. Y.	4 50	New York City.....	For goods purchased—bal. of account.
	R. Douglass & Co.	Glass d'l'rs, 56 Maiden...	37 11	" " "	" " " "
	J. M. Nichols	" " 225 Pearl....	43 41	" " "	" " " "
	R. E. Dietz	Lamp m'f's, 4 Coll. Pl....	89 66	" " "	" " " "
	M. H. Lane	Globe m'f's, 44 Duane....	69 16	" " "	" " " "
	E. Blackman	Burner m'f'r, 93 Ma. L'n..	14 98	" " "	" " " "
	D. Burrell	Lamp d'l'r, 197 Pearl.....	6 93	" " "	" " " "
	F. H. Lovell & Co	" " 233 "	10 43	" " "	" " " "
	Wallace & Sons.....	Brass m'f's, 59 Beekman..	10 80	" " "	" " " "
	Bridgeport Brass Co.....	" " 62 John St...	29 20	" " "	" " " "
	Drew & Crane.....	Barrel d'l's, 71 Beekm'n..	30 45	" " "	" " " "
	Bloomer & Co.....	Hay d'lers, 243 Front....	10 07	" " "	" " " "
	G. W. Stevens.....	Lawyer, 1 Park Place ...	51 52	" " " ..Feb. 1, '70, to May 1, '70,	For royalty on patent used by bankrupts.
	A. Thiery & Co.....	Glass m'f's, Brooklyn....	49 02	Brooklyn	For goods purchased—bal. of account.
	E. Miller & Co.....	Lamp d'l's, Chambers, cor. Church st., N. Y.	48 36	New York City.....	" " " "
	Union Glass Co.....	Glass m'f's, Somerville, Mass.	33 07	Somerville, Mass., M'ch 1, '70, to May 1, '70.	" " " "
	Benedict & Burnham Manufacturing Co.	Brass manufacturers, Waterbury, Conn.	54 00	Waterbury, Conn., since Jan'y 1, '70.	" " " "
	E. S. Dodge.....	Printer, 84 John st.....	2,200 00	N. Y. City, bet. Jan'y 1, '69, to May 1, '70.	For salary for one year and a quarter of a year, at the rate of $1,500 per annum, and for money borrowed by said company from said Dodge.
	J & J. Eager.....	Liquor-dealers, 34 Cliff st., N. Y.	187 50	N. Y. City, April 1, '70, to May 1, '70.	For rent of premises, 34 Cliff st., New York City.

JOHN C. DODGE, *President, Petitioner.*

20 [N. B.—The following form of oath to Schedule A of the petition by debtor is prescribed and is to be annexed to the same.]

Oath to Schedule A.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

On this eleventh day of May, A. D. 1870, before me personally came John C. Dodge, president of the New Lamp-Chimney Company, the person mentioned in and who subscribed to the foregoing petition and schedule marked "A," thereto annexed, and who being by me first duly sworn, did declare the said schedule as composed of seven sheets of paper to be a statement of all the indebtedness of the New-Lamp-Chimney Company, in accordance with the act of Congress entitled, "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

JOHN A. SHIELDS,
U. S. Commissioner.

21 SCHEDULE B.—No. 2.—(*Inventory.*)

IN THE MATTER OF THE NEW LAMP-CHIMNEY Company, bankrupt.

PERSONAL PROPERTY.

A. Cash on hand, none.

B. Bills of exchange, promissory notes, or securities of any description, (each to be set out separately,) none.

C. Stock in trade, in the business of the New-Lamp-Chimney Company, at 34 Cliff street, New York city.

			Dolls.	Cts.
28½	doz.	lanterns	$220	24
43⅙	"	" trimmings	215	83
17½	"	globes	24	20
14 5/12	"	"	50	00
48¼	"	shades, (lamp)	102	19
26 8/12	"	brackets	45	48
4	"	harps and fount	4	80
		Office furniture	300	00
		Goods in storehouse, 312 Water street	2,000	00
734 8/12	"	chimneys	377	91
25,625		" tops	1,276	68
1,634½	"	chimney-glasses	5,452	90
11	"	rings	9	90
7	"	shade-holders	14	00
2,720	"	burners	2,692	32
142	"	stand-lamps, complete	192	26
142	"	pegs	144	84
569	"	collars	131	36
42	"	wick	21	65
794	"	sockets	191	85
359	"	common pegs	300	04
84	"	imported	211	24
2 10/12	"	imported lamps	30	00
41	"	hand-lamps	67	85
289	"	zinc lamps	96	70
746	"	lamp-feet	858	64

D. Household goods and furniture, household stores, wearing apparel, and ornaments of the person, none.
E. Books, prints, and pictures, none.
F. Horses, cows, sheep, and other animals, none.
G. Carriges and other vehicles, none.
H. Farming stock, and implements of husbandry, none.
22 I. Shipping and shares in vessels, none.
K. Machinery, fixtures, and apparatus used in business, with the place where each is situated, none.
L. Goods or personal property of any description, with place where each is situated, none.

JOHN C. DODGE,
Prest., Petitioner.

SCHEDULE B.—No. 3.—(*Inventory.*)

IN THE MATTER OF THE NEW-LAMP-CHIMNEY Company, bankrupt.

CHOSES IN ACTION.

A. Debts due petitioner in open account:

	Dolls.	Cts.
Williams & Batterson, Rochester, N. Y.	$28	18
C. West & Sons, Baltimore, Md.	30	45
L. H. Thomas, Meriden, Conn.	16	91
J. F. Marchal, New Haven, Conn.	15	15
Orlando L. Swoop, Tyrone, Pennsylvania	22	55
A. B. Hoover & Co., " "	35	23
L. B. Eyster, Chambersburg', "	12	82
A. C. McGrath " "	39	75
Huber & Lehmaster, " "	8	87
Hall & Foster, Northampton, Mass.	12	95
George Pierce, jr., Greenfield, Mass.	41	13
J. Rumpel & Son, Columbia, Pa.	12	39
Perry & Tailor, Brattleboro', Vermont	18	87
Avenue House, St. Johnsbury, Conn.	5	30
Jones & Perkins, Canton, N. Y.	3	61
A. C. Blaisdell, Rutland, Vermont	3	52
Petitt & Fennel, Glenn's Falls, N. Y.	33	87
Duke, Bixby & Co., Bristol, Vt.	8	25
H. Callen, Whitehall, N. Y.	30	38
Pitkin & Bro., Fairhaven, Vt.	40	33
Robert Bailey, Plattsburgh, N. Y.	153	62
M. J. Graves, Vergennes, Vt.	10	35
F. Catlin, Newburg, N. Y.	22	31
A. E. Taylor, Hinsdale, Mass.	3	50
Jones, Gregar, & Schugarott, Valparaiso, Chili	47	38
Coogan Bros., Windsor Locks, Conn.	7	95
R. Baxter, 29 Barclay street, N. Y. City	4	05
23 McHenry & Co., Cincinnati, Ohio	22	82
Hill & Veazie, 74 Camp street, New Orleans, La.	16	93
Vincent & Co., New Orleans, La.	622	42
Burtis & French, N. Y. City	5	11
Gilbert & Davis, Albany, Ga.	3	98
A. Meyersburg, 70 Murray street, N. Y. City	6	24

Newbold & Son, Baltimore, Md	11	19
A. Wheelright & Co., Rosario, Argentine Republic, S. A	176	11
Koblet & Co., Alexandria, Egypt	38	17
Race Bros., & Co., Watertown, N. Y	50	82
E. Sperry & Co., Sherman, N. Y	20	48
T. J. McGarvey, Fayetteville, Tenn	2	10
Dunn, Sawyer & Co., Rutland, Vt	5	85
Schwab Bros., Rochester, N. Y	96	75
McGowan Bros., St. Albans, Vt	36	51
Fales & Duncan, Rio de Janeiro, Brazil	630	42
Walker, Nill & Co., Hagerstown, Md	52	70
Bobb & Kimmel, Mechanicsburg, Pa	10	35
E. S. Wealkley, Dayton, Ohio	1	00
H. H. & W. A. Mason, Niles, Ohio	24	10
American Lamp and Lantern Co., Warren and College Place, N. Y. City	64	79
E. B. Gerton, Cincinnati, Ohio	55	98
Montgomery Fork Co., unknown	882	20
W. C. Reese, Eufaula, Ala	78	51
J. O. Patton, Montgomery, Ala	94	66
Vincent & Brown, Charleston, S. C	12	00
Martin Connolly, Jersey City, N. J	44	87
Gregory & Co., Richmond, Va	73	89
Jessie Christie, Springfield, Ohio	26	15
J. D. Buxton, Nebraska City, Neb	11	91
P. C. Howe, Prattsburg, N. Y	14	20
Haynes & Avery, Jackson, Mich	25	31
Yankee Robinson Circus Co., unknown	26	60
J. H. Haight & Co., McGregor, Iowa	60	54
T. Robinson, Kenosh, Wis	42	95
Rice & Co., Springfield, Ohio	10	00
Pogue & O'Hara, Fond du Lac, Wis	29	65
D. W. Hill, Norfolk, Va	5	00
Davis & Williams, Columbus, Ohio	4	14
J. Tibbetts, Jackson, Mich	13	75
Davis & Hunter, Goldsboro', N. C	20	00
Isaac J. Mott, Battle Creek, Mich	26	55
C. M. Cutrick, Kalamazoo, Mich	23	74
Kimball & Smith, Cleveland, Ohio	49	00
24 A. Van Vranken, Schenectady, N. Y	14	62
S. Wakeman, Batavia, N. Y	25	85
McGull & O'Brien, Albany, N. Y	21	65
John Hoben, Waukegan, Ill	15	40
Fletcher & Ensign, St. Paul, Minn	13	05
G. W. Pierce, Crestline, Ohio	8	32
L. Dodge & Son, Schenectady, N. Y	15	66
C. H. Morris & Co., York, Pa	1	41
Kennett & Wilde, Amsterdam, N. Y	2	02
L. B. Rose, Wabash, Ind	20	81
Bowen & Hopkins, East Dorset, Vt	12	34
Wyatt & Watson, Norfolk, Va	67	40
Pancoast & Son, Danville, Iowa	9	00
Cass & Tinkham, Freeport, Ill	21	45
C. Wilden, Rock City, N. Y	9	77
Merritt & Moupt, New Hackensack, N. Y	28	14
S. P. Covert, Crestline, Ohio	15	95

F. H. Frisbee, Titusville, Pa	9 95
R. Brandiff, Pequa, Ohio	19 60
Alma Zeller, unknown	20 45
M. W. Sackett, Meadville, Pa	23 97
R. Bach, unknown	32 06
Warren Mayo, do.	5 87
John Kiernan, Jersey City, N. J	3 14
George C. Gary, Richmond, Va	174 42

B. Stock in incorporated companies, and interest in joint stock companies, none.

C. Policies of insurance.

Lumberman's Insurance Company, of Chicago, Illinois	$2,000 00
Atlantic Fire Insurance Company, of Brooklyn	5,000 00
Connecticut Fire Insurance Company, Hartford, Conn	2,000 00
Sun Insurance Company, Cleveland, Ohio	2,000 00
Prescott Fire and Marine Insurance Company, Boston, Mass.	2,000 00

JOHN C. DODGE,
Prest., Petitioner.

SCHEDULE B.—No. 6—*(Inventory.)*

IN THE MATTER OF THE NEW-LAMP-CHIMNEY Company, bankrupt.

A true list of all book, papers, deeds, and writings relating to the trades, business, dealings, estate, and effects, or any part thereof, which at the date of this petition are in the possession or under the custody and control, or which are in the possession or custody of the
25 officers of said company, in trust for its use, benefit, or advantage; and also of all others which have been heretofore at any time in its possession, or under its custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same.

A.—Books:

Ledger.
Journal.
Day-book.
Cash-book.
Order-book.
Check-book.
Invoice-book.
Minute-book.

B.—Deeds, none.

C.—Papers, etc.

Certificate of incorporation.

JOHN C. DODGE,
Prest., Petitioner.

Oath to Schedule B.—(Inventory.)

UNITED STATES OF AMERICA,
Southern District of New York, ss:

On this eleventh day of May, A. D. 1870, before me personally came John C. Dodge, president of the New-Lamp-Chimney Company, the person mentioned in and who subscribed to the foregoing petition and sched-

ule marked "B" respectively, and to the schedule marked "B" thereto annexed, being by me first duly sworn, did declare the said schedule as composed of twenty-six sheets of paper, to be a statement of all the assets and stock of said company, in accordance with the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

JOHN A. SHIELDS,
U. S. Commissioner.

26 No. 2742.—*In bankruptcy.—Adjudication of bankruptcy.*

In the district court of the United States for the southern district of New York.

IN THE MATTER OF THE NEW-LAMP-CHIMney Company, by whom a petition for adjudication of bankruptcy was filed on the eleventh day of May, A. D. 1872, in said court.

At number 322 Broadway, in the city of New York, *in* the sixteenth day of May, A. D. 1872, before Isaac Dayton, one of the registers of said court in bankruptcy.

I, the undersigned, a register of said court in bankruptcy, upon good proof, before me, Isaac Dayton, register as aforesaid, taken, do find that the said The New-Lamp-Chimney Company has become a bankrupt within the true intent and meaning of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867; and I do hereby declare and adjudge him a bankrupt accordingly.

ISAAC DAYTON,
Register in Bankruptcy.

In the district court of the United States for the southern district of New York.

IN THE MATTER OF THE NEW-LAMP-CHIMney Company, bankrupt. } In bankruptcy.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

At the city of New York, in the county of New York, and State of New York, on the thirtieth day of June, A. D. 1870, before me, Isaac Dayton, one of the registers in bankruptcy, in and for the southern dis-
27 trict of New York, came Jerome B. Hubbard, of the city of New York, in the county of New York, and State of New York, within the southern district of New York, and made oath and says he is the duly-authorized agent of the Ansonia Brass and Copper Company, a corporation carrying on business at Ansonia, Connecticut, and that the said, The New-Lamp-Chimney Company, the corporation by whom a petition for adjudication of bankruptcy has been filed, at and before the filing of the said petition, was and still is justly and truly indebted to the said Ansonia Brass and Copper Company in the sum of five thousand two hundred and fifty-seven dollars and fifty-two cents, and interest at the rate of seven per cent. per annum, upon nine promissory notes, made by The New-Lamp-Chimney Company, for the sums of $513.73, $516.27, $759.19, $511.46, $1,012.25, $253.06, $683.27, $753.67, and $254.52, a

copy of which said nine promissory notes is hereto annexed, marked "Exhibit A;" the consideration of which said nine promissory notes was merchandise, at or about the dates and to the amounts of the said notes sold and delivered by the said The Ansonia Brass and Copper Company to the said The New-Lamp-Chimney Company, upon which nine promissory notes, or on which said debt there has not been any payment made, and which said debt was contracted in the city of New York, in the State of New York, the legal interest in which said notes is seven per cent. per annum, for which sum of five thousand two hundred and fifty-seven dollars and fifty-two cents, and interest as aforesaid, or any part thereof, this deponent says that he has not, nor has the said Ansonia Brass and Copper Company, or any member thereof, or any person by his or their order, or to this deponent's knowledge or belief, for his or their use, had or received any manner of satisfaction or security whatsoever.

28 And this deponent further says that the said claim was not procured for the purpose of influencing the proceedings under the act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867; that no bargain or agreement, express or implied, has been made or entered into by or in behalf of this deponent, or of the said Ansonia Brass and Copper Company, or any member thereof, to sell, transfer, or dispose of said claim, or any part thereof, against said bankrupt, or to take or receive, directly or indirectly, any money, property, or consideration whatever, whereby the vote of the said Ansonia Brass and Copper Company, for assignee, or any action on the part of this deponent, or of the said firm, or any member thereof or of any other person in the proceeding under said act, has been, is, or shall be in any way affected, influenced, or controlled.

JEROME B. HUBBARD,
Agt. Deposing Creditor.

Subscribed and sworn to before me, and the promissory notes therein mentioned produced before me, and Exhibits B, C, D, E, F, G, H, I, J, and the copy thereof also therein mentioned, and hereto prefixed, marked by me "Exhibit A," "30" June, 1870.

Register in Bankruptcy in and for the Southern District of New York.

In the district court of the United States for the southern district of New York.

IN THE MATTER OF THE NEW-LAMP-CHIMNEY Company, bankrupt. } In bankruptcy.

At the office of the register, number 322 Broadway, in the city of New York, in said district, on the thirteenth day of July, A. D. 1870, before Mr. Isaac Dayton, register in bankruptcy.

29 SOUTHERN DISTRICT OF NEW YORK, *ss:*

MEMORANDUM.—This being the day to which, on the thirteenth day of June, 1870, the day appointed by the court for the first meeting of creditors in the above bankruptcy, and of which due notice was given in the New York Times, and the New York Commercial Advertiser, and by special notice served personally or through the mail, this business was adjourned.

We, whose names are hereunto written, being the greater part, in number and value, of the creditors of the said The New-Lamp-Chimney Company, bankrupt aforesaid, and who have proved our debts, have chosen, and do hereby nominate and cho'se James Kerr, of the city of Brooklyn, in the State of New York, glass-manufacturer, to be assignee of the said bankrupt estate and effects, and we do desire that he may be appointed such assignee accordingly.

	Dolls.	Cts.
Ansonia Brass Co., per S. B. Higenbotam, atty. in fact, Cliff street, N. Y.	$5,257	42
Bay State Glass Co., per S. B. Higenbotam, atty. in fact, Cambridge, Mass.	740	05
Dorflinger Glass Co., per S. B. Higenbotam, atty. in fact, 6 Murray street	2,361	75
F. H. Lovell & Co., per S. B. Higenbotam, atty. in fact, 233 Pearl street	468	78
Bridgeport Brass Co., per S. B. Higenbotam, atty. in fact, Bridgeport, Conn.	352	53
Robert E. Dietz, per S. B. Higenbotam, atty. in fact, William street, N. Y.	89	66
J. M. Lane, per S. B. Higenbotam, atty. in fact, Duane street, N. Y.	69	19
A. Friery & Co., Van Brunt and Delevan, Brooklyn	400	85

SOUTHERN DISTRICT OF NEW YORK, *ss:*

I, James Kerr, residing at No. 44 East Warren street, in the city of Brooklyn, carrying on business as a glass-manufacturer at No. 6 Murray street, in the city of New York, above named as assignee, do hereby accept the said trust.

Dated New York, July 13, 1870.

JAMES KERR,
No. 6 Murray Street.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

I, Isaac Dayton, one of the registers of the district court of the United States for the southern district of New York, do hereby approve of and confirm the said choice of assignee.

Dated New York, July 13, 1870.

ISAAC DAYTON,
Register in Bankruptcy.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

At the city of New York, in the southern district of New York, the thirteenth day of July, 1870.

I, Samuel Blatchford, judge of the district court of the United States for the southern district of New York, hereby approve of the election and appointment of the above-named assignee.

SAMUEL BLATCHFORD,
Judge of the District Court of the United States for the Southern District of New York.

Creditors.	Residence.	Am't of debt proved, without interest or rebate.	Sums provedorclaimed to be set forth in the same manner, after the whole of the proofs.	1st dividend.	
American Lamp & Lantern Co.—proved by F. A. Hunt, president..	249 Pearl street.....	$239 43	$248 28	$12 41	Merchandise.
Ansonia Brass & Copper Co.—proved by Jerome B. Hubbard, agent.	Ansonia, Conn.....	5, 257 42	5, 242 09	262 10	9 promissory notes, dated Feb. 14, '70; Mch. 15, 19, 29, 19, 29, 17, 17 Mch., '70. and 6 April, '70, at 60 & 90 days.
Bay State Glass Co.—proved by N. S. Bailey, atty. in fact.....	Cambridge, Mass.....	740 05	740 92	37 14	2 promissory notes, 15 Feb., 1870, at 60 days; April 2, '70, at 30 days.
Ebenezer Blackman—by himself.....	93 & 95 Maiden Lane.	14 98	15 16	75	Merchandise.
Bridgeport Brass Co.—proved by D. W. Kissam, sec'y and treasurer.	Bridgeport, Conn	352 53	348 42	17 42	Promissory note, April 14, '70, at 90 days, and merchandise.
Robert E. Dietz—by himself.....	No. 4 College Place..	80 66	91 22	4 56	Merchandise.
Ed. S. Dodge—by himself.....	N. Y. City	5, 700 00	5, 766 50	288 32	3 promissory notes, dated Jan. 10, 16, and 18, '70, also loans and salary.
Dorflinger Glass Co.—by N. S. Bailey, vice-pres't & treasurer.....	N. Y. City	2, 361 73	2, 396 62	119 83	6 promissory notes, Feb. 4, '70; Mch. 1, 16, 18, '70; May 1 and April 1, '70.
Francis A. Hunt—by himself.....	N. Y. City	151 66	152 24	7 61	Note, dated March 25, 1870.
M. H. Lane—by Eugene A. Lane, atty. in fact.....	44 & 46 Duane street	69 19	69 59	3 47	Merchandise.
F. H. Lovell & Co.—by Orville D. Lovell.....	233 Pearl street.....	468 78	471 05	23 55	Merchandise.
Meriden Malleable Iron Co.—by W. A. Hull, treasurer.....	West Meriden, Conn	305 42	306 60	15 33	2 promissory notes, dated April 2, May 2, 1870, at 3 months.
A. Thiery & Co.—by J. B. Richmond.....	South Brooklyn.....	400 85	402 09	20 10	2 notes, Feb. 11 and March 16, 1870.
Union Glass Co.—by J. P. Gregory, agent.....	Boston, Mass.....	33 07	34 41	1 72	2 notes, Feb. 11 and March 16, 1870.
Ed. Van De Mark.....	N. Y.....	85 00	85 00	51 75	Preferred services.
N. S. Bailey, assignee of E. P. Gleason.....	.....	51 34	54 33	2 71	
N. S. Bailey, assignee of E. Miller & Co.....	.....	1, 652 09	1, 432 00	71 60	
N. S. Bailey, assignee of C. E. Young.....	.....	64 09	63 72	3 18	
Storm Bros	.....	1, 452 95	1, 272 80	63 64	

32 In the district court of the United States for the southern district of New York.

IN THE MATTER OF THE NEW-LAMP-CHIMney Company, bankrupt. } No. 2742. In bankruptcy.

Received from John Kerr, the assignee in bankruptcy of the estate and effects of the bankrupt above named, the sum of seventeen dollars and forty-two cents, due to Bridgeport Brass Co., for the first dividend of the estate of said bankrupt.

$17.42. Dated New York, 22d June, 1871.

BRIDGEPORT BRASS CO.,
J. H. KISSAM.

Received from John Kerr, assignee as aforesaid, the sum of twelve dollars and forty-one cents, due to American Lamp and Lantern Company for the first dividend of the estate of the said bankrupt.

$12.42. Dated 22d June, 1870.

AMERICAN LAMP AND LANTERN CO.,
F. A. HUNT, *Pres't.*

Received from John Kerr, assignee as aforesaid, the sum of seven dollars and sixty-one cents, due to me for the first dividend of the estate of the said bankrupt.

$7.61. Dated 22d June, 1871.

F. A. HUNT.

Received from John Kerr, assignee as aforesaid, the sum of two hunred and eighty-eight dollars and thirty-two cents, due to me for the first dividend of the estate of the said bankrupt.

$288.32. Dated 26th June, 1871.

E. S. DODGE.

33 Received from John Kerr, assignee as aforesaid, the sum of one hundred and nineteen dollars and eighty-three cents, due to the Dorflinger Glass Company, for the first dividend of the estate of said bankrupt.

$119.83. Dated June 23d, 1871.

DORFLINGER GLASS CO.,
N. S. BAILEY, *V. P.*

Received from John Kerr, assignee as aforesaid, the sum of two hun dred and sixty-two dollars and ten cents, due to Ansonia Brass and Copper Company, for the first dividend of the estate of said bankrupt.

$262.10. Dated 23d June, 1871.

ANSONIA BRASS AND COPPER CO.,
J. W. WHEELER.

Received from John Kerr, assignee as aforesaid, the sum of twenty-three dollars and fifty-five cents, due to F. H. Lovell & Co., for the first dividend of the estate of said bankrupt.

$23.55. Dated 23d June, 1871.

F. H. LOVELL & CO.
N. M. LUCAS.

Received from John Kerr, assignee as aforesaid, the sum of twenty

dollars and ten cents, due to A. Thiery & Co., for the first dividend of estate of said bankrupt.
$20.10. Dated 24 June, 1871.

A. THIERY & CO.

Received from John Kerr, assignee as aforesaid, the sum of one dollar and seventy-two cents, for the first dividend of the estate of said bankrupt due to the Union Glass Company.
$1.72. Dated June 27, 1871.

UNION GLASS CO.,
By CHAS. S. CHAFFEY, *Treas.*

34 Received from John Kerr, assignee as aforesaid, the sum of thirty-seven dollars and fourteen cents, due to Bay State Glass Co., for the first dividend of the estate of said bankrupt.
$37.14. Dated 5th July, 1871.

BAY STATE GLASS CO.,
By N. S. BAILEY.

Received from John Kerr, assignee as aforesaid, the sum of fifteen dollars and thirty-three cents, due to Meriden Malleable Iron Co., for the first dividend of the estate of said bankrupt.
$15.33. Dated 7th July, 1871.

MERIDEN MALLEABLE IRON CO.,
W. A. HULL, *Treas.*

Received from John Kerr, assignee as aforesaid, the sum of fifty-one dollars and seventy-five cents, due to me for the first dividend of the estate of said bankrupt, and for preferred claims.
$51.75.

E. VAN DE MARK.

Defendants' counsel rested the defendants' case, and moved the court for a dismissal of the plaintiffs' complaint, on the ground that the plaintiffs by proving their claims on debts on the notes set forth in the complaint in this action, as defendants' creditors in said proceedings in bankruptcy, had waived the right to maintain this action on said notes.

The justice denied the defendants' said motion, and the defendants counsel duly excepted to such denial.

The justice then ordered and directed the jury to render a verdict for the plaintiffs for $5,659.84, to which order and direction the defendants' counsel then duly excepted.

35 The jury thereupon rendered a verdict for the plaintiffs for $5,659.84, pursuant to the order and direction aforesaid.

Supreme court.

THE ANSONIA BRASS AND COPPER COMPANY
against
THE NEW-LAMP-CHIMNEY COMPANY.

MARCH 8, 1872.

Present, Hon. George C. Barrett, justice.

I hereby certify that this cause was this day tried by the court and a jury, and a verdict rendered therein for the plaintiff for the sum of five thousand six hundred and fifty-nine $\frac{84}{100}$ dollars.

On allowance of one hundred dollars, granted 20 days to make a case, with stay of proceedings, except as to entry of judgment.

CHAS. E. LOEW, *Clerk.*

Paid $1.10.

Supreme court, city and county of New York.

THE ANSONIA BRASS AND COPPER COMPANY
against
THE NEW-LAMP-CHIMNEY COMPANY.

MARCH 12, 1872.

The issues in this action having been brought on for trial before Mr. Justice George C. Barrett and a jury, at a circuit court held on the 1st Monday of March, 1872, and the issues having been tried and a verdict in favor of the plaintiffs for the sum of five thousand six hundred
36 and fifty-nine $\frac{}{100}$ dollars having been duly rendered on the 8th day of March, 1872, and their costs having been adjusted at .

Now, on motion of S. B. Higenbotam, attorney for the plaintiff, it is adjudged that the plaintiffs, The Ansonia Brass and Copper Company, recover of the defendants, The New-Lamp-Chimney Company, five thousand six hundred and fifty-nine $\frac{84}{100}$ dollars, found by the jury, with two hundred and twenty-eight $\frac{91}{100}$ dollars costs, making a total of five thousand eight hundred and eighty-eight dollars and seventy-five cents.

(Endorsed:) Filed March 12, 1872, at 1 h. and 40 m.

N. Y. supreme court.

THE ANSONIA BRASS AND COPPER COMPANY
against
THE NEW-LAMP-CHIMNEY COMPANY.

GENTLEMEN: Take notice that the defendants appeal to the general term of this court from the judgment entered in this action on the twelfth day of March, 1872, in favor of the plaintiffs, against the above-named defendants, for five thousand eight hundred and eighty dollars and seventy-five cents, and from the whole of said judgment.

Dated New York, April 5, 1871.

Yours, etc.,

MARTIN & KING,
Defendants' Attorneys.

To S. B. HIGENBOTAM,
Plaintiffs' Attorney.

CHAS. E. LOEW,
Clerk of said Court.

37 At a general term of the supreme court of the State of New York, held in and for the first judicial department, at the county court-house in the city of New York, on the 5th day of February, 1873, present, Hon. D. P. Ingraham, P. J., E. L. Fancher, J.

THE ANSONIA BRASS AND COPPER COMPANY
vs.
THE NEW-LAMP-CHIMNEY COMPANY.

The appeal from the judgment entered in favor of the plaintiff in this

action for $5,888 $\frac{78}{100}$, on the 12th day of March, 1872, having been heard at this general term, it is now, on motion of Rogar A. Pryor, esq., of counsel for the respondent, and after hearing John M. Martin, esq'r, for the appellant—

Adjudged that the said judgment be affirmed, with costs to the respondent.

A copy.

CHARLES E. LOEW, *Clerk.*

(Indorsed:)

Take notice, the within is a copy of order entered herein Feb'ry 25, 1873. N. Y., Feb. 26, 1873.

SAM. B. HEGINBOTAM,
Plffs.' Atty., 24 Pine st., N. Y. City.

To Messrs. MARTIN & KING,
Atty. for Deft. & Applt.

Rec'd Feb'ry 26, 1873.

38 New York supreme court, city and county of New York.

THE ANSONIA BRASS AND COPPER COMPANY
agt.
THE NEW-LAMP-CHIMNEY COMPANY.

The appeal in this action from the judgment entered herein, March 12th, 1872, having been regularly brought on to argument before the Hon. D. P. Ingraham, P. J., and the Hon. Enoch L. Fancher, j., at a general term of this court, held at the county court-house in the city of New York for the first judicial department, on the 5th day of February, 1873, and the decision of the said general term thereon having been filed on the 25th day of February, 1873, whereby the said judgment was in all things affirmed, and whereby the court adjudged that
39 the plaintiff and respondent herein recover from the defendant and appellant herein his costs on this appeal; and said costs having been duly adjusted at one hundred $\frac{69}{100}$ dollars:

Now, on motion of Samuel B. Heginbotam, attorney for the plaintiff & respondent herein, it is adjudged that the judgment herein entered and docketted on the 12th day of March, 1872, in favor of the plaintiff, against the defendant, for the sum of five thousand eight hundred and eighty-eight $\frac{75}{100}$ dollars damages and costs, be, and the same is hereby, affirmed; and it is further adjudged that the said plaintiff & respondent, The Ansonia Brass and Copper Company, recover from The New-Lamp-Chimney Company, the defendant and appellant herein, the further sum of one hundred $\frac{69}{100}$ dollars, his costs and disbursements on this appeal.

40 N. Y. supreme court.

THE ANSONIA BRASS AND COPPER COMPANY, plaintiffs and respondents,
against
THE NEW-LAMP-CHIMNEY COMPANY, DEFENDANTS & appellants.

GENTLEMEN: Take notice, that the defendants appeal to the court of

appeals from the judgment of the general term of this court, in this action, entered on the twenty-seventh day of February inst., and from the order whereon the same was entered, affirming the judgment and order of said supreme court at a special term, in favor of the plaintiffs against the defendants, entered on the 12th day of March, 1872, and that
41 upon this appeal the appellants will review said judgment and order of said special term.

Dated N. Y., Feb'ry 28th, 1873.

Yours, &c.,

MARTIN & KING,
Attys. for Defts. & Applts.

To S. B. HEGINBOTAM, Esq.,
Atty. for Plff. & Respondts.
CHARLES E. LOEW, Esq., *Clerk, &c.*

(Indorsed:) Notice of appeal.

42 STATE OF NEW YORK,
City and County of New York, ss:

I, Charles E. Loew, clerk of the supreme court in and for said county, do hereby certify that the foregoing consists of certified copies of the notice of appeal, and the judgment-roll on file in my office.

{ SUPREME COURT. L. S. SEAL. } In witness wherof I have hereunto set my hand and affixed my official seal this 3rd day of March, A. D. 1873.

(Signed) CHAS. E. LOEW, *Clerk.*

43 Court of appeals.

STATE OF NEW YORK, *ss:*

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the 10th day of June, in the year of our Lord one thousand eight hundred and seventy-three, before the judges of said court.

Witness the Hon. Sanford E. Church, chief judge, presiding.

E. O. PERRIN, *Clerk.*

Remittitur June 14th, 1873.

THE ANSONIA BRASS AND COPPER COMPANY, respondent,
agst.
THE NEW-LAMP-CHIMNEY COMPANY, APPELLANT.

Be it remembered, that on the 5th day of March, in the year of
44 our Lord one thousand eight hundred and seventy-three, The New-Lamp-Chimney Company, the appellant in this action, came here into the court of appeals, by Martin & King, its attorneys, and filed in the said court a notice of appeal and return thereto from the judgment of the general term of the supreme court, first judicial department of the State of New York.

And the Ansonia Brass & Copper Company, the respondent in said action, afterwards appeared in said court of appeals, by S. B. Higinbotam, its attorney.

Which said notice of appeal, and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon the said court of appeals, having heard this cause argued by Mr. John M. Martin, of counsel for the appellant, and by Mr. Roger A. Pryor, of counsel for the respondent; and after due deliberation had thereon, did order and adjudge that the judgment of the supreme court, appealed from in this action, be in all things affirmed. And it was further ordered and adjudged that the respondent recover against the appellant costs of appeal to this court.

45

And it was also further ordered that the record aforesaid, and the proceedings in this court, be remitted to the said supreme court, there to be proceeded upon according to law.

Therefore it is considered that the said judgment be in all things affirmed, with costs as aforesaid, and stand in full force, strength, and effect.

And hereupon, as well the notice of appeal and return thereto aforesaid, as the judgment of the court of appeals aforesaid, by them given in the premises, are, by the said court of appeals, remitted into the supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court before the justices thereof, &c.

46

E. O. PERRIN,
Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
Albany, June 14th, 1873.

I hereby certify that the proceding record contains a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein attached thereto.

[L. S.] E. O. PERRIN, *Clerk.*

47 UNITED STATES OF AMERICA, *ss:*

To The Ansonia Brass and Copper Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden on the second Monday of October next, pursuant to a writ of error filed in the office of the clerk of the supreme court of the State of New York, wherein The New-Lamp-Chimney Company is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Ward Hunt, one of the justices of the said Supreme Court of the United States, this 29th day of September, in the year of our Lord one thousand eight hundred and seventy-three.

WARD HUNT.

(Indorsed:) Supreme Court U. States. The New-Lamp-Chimney Company, plaintiff in error, vs. The Ansonia Brass & Copper Compy., defendant in error. Citation. John M. Martin, atty. for plff. in error, 51 William st., N. Y.

48 *Aft. service of p. citation.*

Supreme Court of the United States.

THE NEW-LAMP-CHIMNEY COMPANY, PLAINTIFF in error,
vs.
THE ANSONIA BRASS AND COPPER COMPANY, defendant in error.

RODOLPH C. OAKLEY, being duly sworn, says that the Ansonia Brass and Copper Company has a place of business at No. 21 Cliff street, in the city of New York, and that G. W. Cowles is secretary of the company, and has charge of the business of the company at that place.

That said secretary informed deponent that as such secretary he received all legal papers to be served on said company in the State of New York, and was the proper officer upon whom such paper should be served.

That deponent thereupon served a true copy of the annexed citation on said secretary, by delivering the same to and leaving the same with him at said place of business, on the first day of October, 1873.

49 And further deponent says not.

R. C. OAKLEY.

Sworn to before me this 2d day of October, 1873.

JOHN A. SHIELDS,
U. S. Commissioner for S. N. Y.

(Indorsed:) Supreme Court United States. The New-Lamp-Chimney Company, plaintiff in error, vs. The Ansonia Brass & Copper Company, defendant in error. Citation and affidavit of service. John M. Martin, atty. for plff. in error, 51 William st., N. Y.

50 Know all men by these presents that we, the New-Lamp-Chimney Company, of the city and State of New York, as principal, and Edward Dodge, late banker, of No. 20 Nassau street, in the city of New York, and Samuel J. Foster, U. S. bonded warehouseman, of No. 65 Water street, in said city, are held and firmly bound unto the Ansonia Brass and Copper Company in the sum of five hundred dollars, to be paid to the said the Ansonia Brass and Copper Company, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the twenty-fourth day of September, in the year of our Lord one thousand eight hundred and seventy-three.

Whereas The New-Lamp-Chimney Company above named hath prosecuted and sued out a writ of error returnable to the Supreme Court of the United States, directed to the justices of supreme court of the State of New York, to reverse the judgment rendered by the judges of the court of appeals of the State of New York in a plea between the said New-Lamp-Chimney Company, appellant, and the said Ansonia Brass and Copper

51 Company, respondent, the record and proceedings of which judgment have been remitted to said supreme court of said State by said court of appeals, pursuant to the statute in such case made and provided, where said record and proceedings now remain.

Now, therefore, the condition of this obligation is such that if the

above-named New-Lamp-Chimney Company shall prosecute the said writ of error to effect, and answer all damages and costs if said New-Lamp-Chimney Company fail to make their plea good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

{ SEAL OF NEWL-AMP- CHIMNEY COMPANY. }

JOHN C. DODGE,
Prest. of the New-Lamp-Chimney Co.
EDWARD DODGE. [L. S.]
S. J. FOSTER. [L. S.]

Sealed and delivered and taken and acknowledged this 24th day of September, 1873, by Edward Dodge, before me.

KENNETH G. WHITE,
Clerk of the Circuit Court of the U. S. for the Southern District of New York.

Sealed and delivered and taken and acknowledged this 25th day of September, 1873, before me, as to John C. Dodge and S. J. Foster.

JOHN A. SHIELDS,
U. S. Commissioner of the Southern District of New York.

52 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Edward Dodge, being duly sworn, doth depose and say that he is worth the sum of one thousand dollars over and above all his just debts and liabilities.

EDWARD DODGE.

Sworn to this 24th day of September, A. D. 1873, before me.

{ SEAL U. S. CIRCUIT CT., SOUTH. DIS'CT N. Y. }

KENNETH G. WHITE,
Clerk of the Circuit Court of the U. S. for the Southern District of New York.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Samuel J. Foster, being duly sworn, doth depose and say that he is worth the sum of one thousand dollars over and above all his just debts and liabilities.

S. J. FOSTER.

Sworn to this 25th day of September, 1873, before me.

JOHN A. SHIELDS,
U. S. Commissioner in & for the Southern District of New York.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of John A. Shields, whose name is subscribed to the annexed bond for costs, and that the signature to the same is in his proper handwriting.

And I do further certify that he was at the time of signing the same a United States commissioner, duly appointed by the circuit court of the United States of America for the southern district of New York, second circuit.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court, this 26th day of September, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of these United States the ninety-

{ SEAL CIRCUIT CT. } KENNETH G. WHITE,
{ U. S., S. D. OF N. Y. } *Clerk.*

(Indorsed:) Copy. Supreme Court of the United States. The New-Lamp-Chimney Company, plaintiff in error, vs. The Ansonia Brass and Copper Company, defendant in error. Bond for costs on writ of error out of Supreme Court U. S. John M. Martin, atty.

I approve of the form of the within bond & the sufficiency of the surety for costs.

WARD HUNT.

Sept. 29th, '73.

(Indorsed:) United States Supreme Court. The New-Lamp-Chimney Company, plaintiff in error, vs. The Ansonia Brass and Copper Company, defendant in error. Return to writ of error. John M. Martin, atty. for plff. in error, 51 William street, N. York City.

53 Supreme Court of the United States, of the term of October, in the year of our Lord one thousand eight hundred and seventy-three.

THE NEW-LAMP-CHIMNEY COMPANY, PLAINTIFF in error, *vs.* THE ANSONIA BRASS AND COPPER COMPANY, defendant in error. } In error.

Afterwards, to wit, on the second Tuesday of October, in this same term of October, before the Supreme Court of the United States, comes the said The New-Lamp-Chimney Company, by John M. Martin, their attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

That, by the record aforesaid, it appears that the complaint aforesaid, and the matters therein contained, are not sufficient in law for the said The Ansonia Brass and Copper Company to have or maintain their aforesaid action thereof against the said The New-Lamp-Chimney Company.

There is also error in this, to wit:

That, by the record aforesaid, it appears that the judgments of the supreme court and of the court of appeals of the State of New York, in form aforesaid given, were given for the said The Ansonia Brass and Copper Company against the said The New-Lamp-Chimney Company; whereas, by the law of the land, the said judgments, and each of

54 them, *a*ught to have been given for the said The New-Lamp-Chimney Company against the said The Ansonia Brass and Copper Company.

There is also error in this, to wit:

That, by the record aforesaid, it appears that the said court of appeals, upon appeal from the said judgment of the said supreme court, at a general term thereof, rendered judgment of affirmance of the said judgment of said supreme court of said general term; whereas, by the law of the land, the said court of appeals *a*ught to have rendered judgment of reversal of said judgment of said supreme court at general term.

And the said The New Lamp-Chimney Company pray that the judgment aforesaid of the said court of appeals for the errors aforesaid and others, errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing; and the said The New-Lamp-Chimney Company may be restored to all things which they have lost by reason of said judgment, &c.

JOHN M. MARTIN,
Attorney for Plff. in Error,
51 *William st., N. York City.*

(Indorsed:) U. S. Supreme Court. The New-Lamp-Chimney Co., plff. in error, vs. The Ansonia Brass & Copper Company, deft. in error. Assignment of errors. John M. Martin, atty. for plff. in error. Filed 25 October, 1873.

55 Supreme Court of the United States.

THE ANSONIA BRASS & COPPER COMPANY, defendant in error, *ads.* THE NEW-LAMP-CHIMNEY COMPANY, PLAINTIFF in error. } In error.

And hereupon, afterwards, to wit, on the second Tuesday of October term, in the year of our Lord one thousand eight hundred and seventy-three, the said The Ansonia Brass and Copper Company, by Daniel D. Lord, its attorney, freely comes here into court, and says there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid; and it prays that the said Supreme Court, before the aforesaid justices now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c. But because, &c.

DANIEL D. LORD,
Atty. for Deft. in Error.

(Indorsed:) 1873. Octo. term. Supreme Court of the United States. No. 612. The Ansonia Brass & Copper Company ads. The New-Lamp-Chimney Company. Joinder in error. Filed 3d November, 1873.

(Indorsement on cover:) No. 304. The New-Lamp-Chimney Company, plaintiff in error, vs. The Ansonia Brass and Copper Company. New York sup. court. Filed 25 October, 1873.

Supreme Court of the United States.

THE NEW LAMP CHIMNEY COMPANY,
Plaintiff in Error,
vs.
THE ANSONIA BRASS AND COPPER COMPANY,
Defendant in Error.

Statement and Points of Plaintiff in Error.

This case comes into this Court to obtain a reversal of a judgment of the Court of Appeals of the State of New York against the New Lamp Chimney Company. The action in which the judgment was given, was founded on nine overdue promissory notes, amounting in all to $5,266.94 drawn by the New Lamp Chimney Company, and held by the Ansonia Brass Company.

The defence was, that the New Lamp Chimney Company was declared bankrupt by the United States District Court for the Southern District of New York, and the property of the Company duly assigned to an assignee in Bankruptcy, and that the Ansonia Brass Company proved its claims upon the notes against the Estate of the New Lamp Chimney Company, and received dividends out of it, and thereby waived all right of action against the bankrupt for the unpaid balance of the notes, by an express provision of the 21st Section of the Bankrupt Act of 1867. The action was tried at a New York Circuit in 1872, and the record of the Bankrupt proceedings was introduced and admitted in evidence, from which, and an admission of the receipt of dividends, the above mentioned facts of defence appeared. The Counsel for the bankrupt company then moved for

a non suit or dismissal of the complaint on the ground above stated.

The Justice denied the motion and ordered a verdict for the balance due on the notes, and a judgment was thereupon entered with costs Subject to Exception (See Tr. Record p. 21

From this judgment the Bankrupt Company appealed to the General Term of the Supreme Court of the State, where the judgment appealed from was affirmed solely on the ground that the United States District Court had no jurisdiction of the proceedings in bankruptcy, at the same time conceding that, but for such want of jurisdiction, the right of action would have been waived by the creditor company's proof of claim.

See 64 Barb. S. C. R., 435, op. 437.

From the latter judgment another appeal was taken to the New York Court of Appeals, where the last mentioned judgment was affirmed on another ground, to wit, on the ground "that the clause above quoted (the first "part of the 21st Section) is so inconsistent and hostile "with the whole tenor and intent of the Act or with the "particular provisions of it, as that it cannot stand in "harmony with them."

See 53 N. Y. Rep., 123, op. 152.

The plaintiff in Error now asks this Court to reverse the last judgment.

The following is the language of the portions of this Section material to this case:

"*And be it further enacted,* that no creditor proving "his debt or claim shall be allowed to maintain any suit "at Law or in equity therefor against the Bankrupt, "but shall be deemed to have waived all right of action "and suit against the bankrupt; and all proceedings "already commenced, or unsatisfied judgments already

"obtained thereon, shall be deemed to be discharged "and surrendered thereby."

"And no creditor whose debt is *provable* under this "Act, shall be allowed to prosecute to final judgment "any suit at Law or in equity therefor against the "bankrupt until the question of the debtor's discharge "shall have been determined."

POINTS.

I.

These two paragraphs relate exclusively to two classes of creditors :

First. Those who have provable debts *and prove them* ; and—

Second. Those who have *provable* debts and *do not* prove them.

In the case of those who prove their debts, the Act distinctly declares that *such proof* shall be deemed a WAIVER of all right of action against the Bankrupt, and it makes no distinction in case of proof, between persons and corporations.

In the case of those who have provable debts and do not prove them, and the bankrupt is not discharged, action may be brought on the claim after it is determined that there is to be no discharge.

In this respect there is no distinction between a corporation declared bankrupt under the 37th Section of the Act, and an individual who fails to get a discharge under the 32d Section of the Act, except that a corporation can always be sued when there is no proof, because it never can be discharged, while the individual

can only be sued when there is *no proof* and *no discharge.* And it is submitted that the Court of Appeals erred in deciding the case, by overlooking the distinction between these two clauses, and the two classes of cases to which they refer.

II.

This is submitted as a correct exposition of the parts of the 21st Section involved in this case, and it has been held to be so by the Supreme Court of New York in the case before the court (64 Barb. Sup. C. R. 435), the Supreme Court of Massachussetts in Bennett et. al. *v.* Goldthwait (109 Mass. 494), and the Supreme Court of California in Wilson *v* Capuro (41 Cal. 545).

The same point has also been ruled by State and Federal Courts under the Bankrupt Act of 1841, containing the following similar language, to wit :

"No creditor or other person coming in and proving "his debt or other claim shall be allowed to maintain "any suit at law or Equity therefor, but shall be deemed "thereby to have *waived* all right of action and suit "against such Bankrupt."

5 U. S. Stat. at Large §. 5.

This Act made no distinction between debts *proved* and *provable*, and accordingly, it was held under it, by the United States District Court sitting in Bankruptcy in Maine, that the *proving* of the debt alone, is a bar to any suit at law or in Equity for the recovery of the debt so proved.

Everett et. al. *v.* Derby, 5 Law Reporter, pp. 225, 227.

So in the case of Edson Comstock, which was an application for a discharge from imprisonment under an execution for a debt *Ex delicto* out of the Supreme Court of Vermont, the same Federal Court said, "The *proof* "*itself* operates as a discontinuance of any suit pending, "and is a surrender of any judgment recovered for the "debt proved—"and further—"The Act like the "English Bankrupt laws *allows the creditor to elect* "whether he will come in and prove his debt or take his "remedy at Law"—and granted a discharge. (5 Law Reporter, p. 165–6). As to the rule in England see James' Bankrupt Law—1867, p. 97, note, and cases.

So in Haxtun et. al. *agt.* Corse, where the Defendants had proved their debt under the same Act in order to defeat the defendant's discharge, and did defeat it; and afterwards filed a bill to reach trust property of the defendant for the same debt. The Vice-Chancellor held that the Complainants were precluded from maintaining the action by the 5th Section of the Act, *because they had elected to go in under the Bankrupt Act and prove their debt*;" adding, "This section does not involve an "absurdity. Creditors may or may not come in and "prove their debts. But if they come in and prove, "they become *parties to the proceedings*, and although "they may defeat or prevent the bankrupt's discharge, "they can only obtain or claim payment of their debts "under and by virtue of the proceedings in Bankruptcy."

4 Edwards Ch. Rep. 585, 587. Affirmed
2 Barb. Ch. R., 508, 514, 533.

And in the late case in Massachusetts above referred to (109 Mass. 594–5), the Supreme Court of that State says—"*there is nothing in the other provisions of the* "*Bankrupt Act to diminish the effect of this clause.*"

III.

CONSTRUCTION.

On the construction of the statue, the plaintiff in error refers to the following authorities.

U. S. *v.* Fisher, 2 Cranch, 358, 399.
Maillard *v.* Lawrence, 16 How. U. S. R., 251, 261.
Jackson *v.* Lewis, 17 John. N. Y. R., 475.
People *v.* N. Y. Cent. R. R. Co., 24 N. Y. Rep. 487.
Waterford & Whitehall Turnpike Co. 9 Barb. N. Y.
Vattel B. 2. Ch. 17, § 263. Sup. b. Rep. 161, 170.

And he also submits that the amendment of this Section, declaring that no creditor by proving his claim shall be held to have waived his right of action when no discharge is granted, amounts to an admission by Congress, that before the amendment, he did waive his action by such proof. Else why so amend the Act ?

See Statutes U. S. 1874, Ch. 390, § 7. p. 179.

IV.

JURISDICTION.

In the courts below it was alleged, and probably will be here, that the United States District Court did not acquire jurisdiction of the proceedings in Bankruptcy, because the " petition did not show that it was duly authorized by a vote of a majority of the corporators present at a legal meeting of the *corporators*," but only by a majority of the trustees—not the corporators. And that

by reason of such want of jurisdiction the defendant was not bound by those proceedings, and had a right to the action.

See copy Petition, etc., fol. 16, Transcript Record, p. 8.

One answer to that allegation is, that the petition giving the Court jurisdiction is exactly in the form prescribed by this court pursuant to the 10th Section of the Bankrupt Act.

Compare Form used in this case (fol. 16, p. 8, Transcript) with prescribed Form No. 3, then in general use, in Bump's Bankruptcy Practice, 1st Ed., p. 125.

Another answer is,—That the plaintiffs in error were a Manufacturing Company formed under the New York Manufacturing Act of 1848, which authorizes *any three persons* to form a corporation, and declares that the trustees thereof shall be stockholders (N. Y. Sess. Laws, 1858, Ch 40, §§ 1, 2). By the statement of authority filed in this case (see in fol. 16, Transcript), it appears that the trustees met and voted, and that a *majority of the trustees present* at such meeting authorized the President to file the petition. And if there was a *majority* then present there must have been at least *three* at the meeting, if no more; and there were enough to constitute, and for any thing that appears in the Record, did constitute the whole corporation.

So that in point of fact, it did, and does appear on the face of the proceedings, that a majority of the stockholders did authorize the petition to be filed; and certainly, no Court will say in a collateral proceeding that those trustees were not all the stockholders as well as the trustees of the corporation, and holders of the whole, as well as a majority of the stock, and *were themselves the corporation.*

On the contrary, is not a Court in a collateral proceeding like this, bound to *presume* they were so, under the general rule that *everything is to be presumed in favor of the proceedings of a Court of general jurisdiction.*

Sprague *v.* Litherberry, 4. M'L. 442, 443, 446.
Briggs *v.* Blue, 5 ed. 148.

V.

The allegation of a want of Jurisdiction is untenable for other reasons :

First.—Because the U. S. District court has original and *exclusive* jurisdiction of all matters in Bankruptcy : Bankrupt Act § 1.

In re, R. H. Barrow.
In re, Loeb Simon & Co.
In re, W. D. Winter, I. B. R 125.
In re, Francis Schnepf, 6 Int. Rev. 214, S. C. 7 Am. Law Reg. 204, 206.

And no decree in bankruptcy can be impeached collaterally by a *creditor*.

Shawhan *v.* Wherritt 7 How., U. S. R. 627. 643 (case under Act 1841).

Nor can the sufficiency of a *petition* be determined collaterally.

Blackburn *v.* Stannard, 5. Law Reporter 250.

Second.—Because the decisions of Courts, like the U. S. District Court sitting in Bankruptcy, and having

an *exclusive* jurisdiction, are conclusive in all other Courts.

Ex parte Norris, 4 B. Reg., p. 10.
S. C. Am. Law Reg. 216.
2. Abb. U. S. C. and D. C. Rep., 514,
Gelston *v.* Hoyt, 3 Wheat. 248, op. Story 313.

And this although no jurisdiction be shown on record.

McCormick *v.* Sullivant, 10 Wheat, 192, 199.
Ex parte Watkins, 3 Peters., 193, 202, 203, 207.
Foote *v.* Stevens, 17 Wend. N. Y. Rep., 483, 465.
Hart *v.* Seixas, 21 id. N. Y. Rep. 40.
Huff *v.* Hutchinson, 14, Hous U. S. R. 586, 588.

Third.—Because it is a legal maxim that nothing shall be *intended to be out of the Jurisdiction of a Superior Court, but that which is shown to be so.*

Peacock *v.* Bill, 1 Saund. 74.
Kundolph *v.* Thatheimer, 17 Barb. 506, 508.
Kinney *v.* Grier, 13 Ill. 432, 439, 445.
Kelsey *v.* Wiley, 10 Geo. 371, 382.

And every presumption is made in favor of a Court of general jurisdiction.

Sprague *v.* Litherberry, supra.
Briggs *v.* Blue, supra.
Faulkner *v.* Gould, 10 Wis. 565, 572.
Prince *v.* Nevius, 1 Hills, N. Y. R. 154, 164.

Fourth.—Because if the petition had failed to state facts sufficient to show jurisdiction (which is denied), it would have been a defect which might, and would have been remedied if objected to while the proceedings were pending, by adding after the word "Trustees," the words "being a majority of the Corporators." And the creditor having failed to raise his objection *then*, will not be permitted to do it *after a decree*, and especially in a collateral proceeding.

Shawhan *v.* Wherritt, 7 How. U. S. R., 627, 643.

Ex parte Larramore, 5 Law Reporter, 370.

State *v* Rye, 35, N. H. 468, 477.

Vanderheyden *v.* Young, 11 John R., 150, 176.

1 Smith's Lead'g cases, 1145 (7 Am. Ed).

Fifth.—Because a judgment of a court of competent jurisdiction as to *parties* and *privies* is final; not only as to the matter actually determined, *but as to every other matter which might have been litigated and a decision had thereon.*

Voorhees et. al. *v.* Jackson ex. dem. Bank U. S., 10 Peters, 449, 472.

Bruen *v.* Hone, 2. Barb. S. C. R. 586, 596–7.

Vail *v.* Vail, 7 id. 226, 242.

Embury *v.* Connor, 3 Comst. N. Y .R. 511, 522.

And in courts of inferior jurisdiction even, it is said—"that a party who appears and contests the case on the merits, should not be allowed to

controvert the authority of the Court subsequently on grounds which might have been obviated at the time," and "where the facts necessary to give the Court jurisdiction might have been then traversed or disproved under the then circumstances, the defendant tacitly concedes that the subject matter of the controversy is within the powers of the Court; and the admission cannot be retracted after the cause has gone to judgment without a violation of good faith, *which the law prevents by raising an Estoppel.*" "*The rule that consent will not give jurisdiction was not intended for such cases.*"

1 Smith's Lead. cases, p. 1112, (7 Am. Ed).

Dyckman *vs.* the Mayor, etc., 1 Seld. N.Y. R., 434, 440.

VI.

The case of the Lady Bryan Mining Co., decided by the United States District Court in Nevada (4 B. R. 36, 131), has no application to this case.

First.—Because the question was raised on motion in the District Court itself, and not in a collateral proceeding in another court.

Second.—Because it *appeared affirmatively* on an application to amend the petition made on behalf of the Bankrupt, that *the trustees were not a majority of the stockholders;* and—

Third.—Because the objector (an attaching creditor) may be presumed to have been a party to the bankrupt proceedings.

VII.

The opinion of the Supreme Court in this case, on the question of Jurisdiction, is erroneous in the following particulars, viz. :

First.—In assuming that the petition was without the consent of a majority of the corporators; and

Second.—That "it is affirmatively shown that the neces- "sary papers were not presented to the Court so "as to make the proceedings legal."

Upon these assumptions of fact, the decision of that Court entirely rests, and is erroneous.

See op. 64 Barb. S. C. R., p. 437.

VIII.

The rights of the parties to this action arose and became fixed before the amendment of the 21st Section, by the Act of 1874, and are not affected by it, and the judgment of the Court of Appeals ought to be reversed.

JOHN M. MARTIN,

Att'y and of Counsel for Pl'ff in Error.

SUPREME COURT,

OF THE UNITED STATES.

No. 85.

THE NEW LAMP CHIMNEY COMPANY,
Plaintiff in Error,

vs.

THE ANSONIA BRASS AND COPPER COMPANY,
Defendant in Error.

In Error to the Supreme Court

Of the STATE OF NEW YORK.

Statement of Case and Points for Defendant in Error.

SAMUEL B. HIGENBOTAM,
Counsel for Defendant in Error.

JOHN M. MARTIN,
Counsel for Plaintiff in Error.

BAYONNE CITY, N. J.:
HUDSON COUNTY TIMES PRINT.
1875.

SUPREME COURT,

OF THE

UNITED STATES.

THE NEW LAMP CHIMNEY COMPANY,

Plaintiff in Error,

vs.

THE ANSONIA BRASS AND COPPER COMPANY,

Defendant in Error.

No. 85.

STATEMENT OF THE CASE AND POINTS FOR THE DEFENDANT IN ERROR.

Defendant in error commenced an action against plaintiff in error, in the Supreme Court of the State of New York in 1870 for debt on promissory notes, (*fo.* 5, 8).

Plaintiff in error for defense in that action set up the matter on which it continues to make issue in this Court, *i. e.*, proof of the debt *in alleged voluntary proceedings in Bankruptcy of plaintiff-in-error, (fo.* 8, 9.)

Judgment was for defendant-in-error, (*fo.* 36).

Plaintiff-in-error appealed to the general term of said Supreme Court, where the judgment was affirmed, (*fo.* 37).

Vide, the opinion of the general term reported, Ansonia B. & C. Co., *v.* New Lamp Chimney Co., 64 Barbour, 435.

Plaintiff-in-error appealed to the N. Y. Court of Appeals, where said Judgment was affirmed, (*fo.* 44).

Vide, the opinion of that Court, Ansonia B. & C. Co., *v.* New Lamp Chimney Co., 53 N. Y., 123.

Whereupon assignment of error is made in this Court, (*fo.* 53), and writ granted September, 1873, the question involved being the construction of a statute of the United States.

The contention of the plaintiff in error is, as it has been throughout—That under Sec. 21, Bankrupt law, the claim of defendant in error was extinguished by proof of the debt in the bankruptcy proceedings.

Assuming, but not conceding this construction of the section to be correct, we answer:

First Point.

That the petition in bankruptcy, the adjudication of bankruptcy, the proof of the debt, and all the proceedings in the Bankrupt Court were void, *ab initio*, and so, ineffectual to suspend, or to bar, action on the debt.

I. A corporation can become a voluntary bankrupt only upon the petition of an officer of the corporation,

"duly authorized by a vote of a majority of the *corporators* present at a legal meeting called for the purpose," (*Sec.* 37 *Bankrupt Act*). In this case the petition was authorized by a majority of the *trustees*, not of the *corporators*, (*fo.* 16). This is a jurisdictional defect.

In re Lady Bryan Mining Co., 4 Bank, Reg. 36: affirmed on review by the Circuit Court. 4 Bank, Reg. 131.

The meeting must be of corporators, *qua* corporators.

Though the trustees were stockholders it is not apparent that the meeting was a "legal meeting" of the corporators.

For the manner of convening a legal meeting of corporators, *Vide*, Chap. 40 Laws of New York, 1848, § 21, for incorporation of manufacturing companies; under which Act plaintiff-in-error was incorporated, (*fo.* 14).

II. If a court have jurisdiction, but proceed *inverso ordine*, the error is available only on review, and its judgment is valid until reversed. But if the Court have *not* jurisdiction, its judgment is an absolute nullity, and is impeachable, collaterally.

Kerr *v.* Kerr, 41 N. Y., 275.
Kinnier *v.* Kinnier, 45 N. Y., 535.
Newman *v.* Sup'rs, 45 N. Y., 688.
Borden *v.* Fitch, 15 Johns, 121.
Mills *v.* Martin, 19 Johns, 7.
Chapman *v.* The City, 40 N. Y., 372.
Cooper *v.* Reynolds, 10 Wall, 316.
The Marshalsea, 10 Coke, 68, 76.
Wise *v.* Withers, 3 Cranch, 331.
1 Smith's L. C., 816, Note by Hare.
2 Phil. on Evid. Cowen, H. & E. page 117, Note 293.

Tucker *v.* Tucker, 4 Keyes, 150.
Hastings *v.* Farmer, 4 N. Y., 296.
In re Penn. 3 Bank, Reg. 145.

III. The jurisdiction of a court of special and limited jurisdiction must appear *ex facie* its proceedings. Its record must exhibit affirmatively everything essential to jurisdiction; otherwise its judgment is a nullity. And conformity to the statutary mode of acquiring jurisdiction, is indispensable to the validity of its proceedings.

Hale *v.* Sweet, 40 N. Y., 97.
Steeples *v.* Fairchild, 3 N. Y., 41.
Schneider *v.* McFarland, 2 N. Y. 459.
Stanton *v.* Ellis, 12 N. Y., 575.
Sibley *v.* Wapple, 16 N. Y., 190.
Buff & T. & R. R. Co. *v.* Supv'rs, 48 N. Y., 99.
Bloom *v.* Burdick, 1 Hill, 130.
Hart *v.* Gray, 3 Sumner, 339.
Hill *v.* Mitson, 8 Exch. 751.
Rex *v.* Guardians, 1 Q. B., 677.
Mathewson *v.* Sprague, 1 Curtis, 456.
Sheldon *v.* Till, 8 How. U. S., 495.
Cobb *v.* Cooper, 15 Johns, 157.
Mosier *v.* Woful, 56 Barb, 80.
Peacock *v.* Bell, 1 Wms' Saunders, 73.
Mills *v.* Martin, 19 Johns, 7.
Ford *v.* Babcock, 1 Denio, 158.
Taylor *v.* Clemson, 11 Cl. & Fin., 610.
R. *v.* All Saints, 7 B. & C., 785.
Stanton *v.* Styles, 5 Exch., 583.
Gossett *v.* Howard, 10 Q. B., 411.
People *v.* Knowles, 47, N. Y., 419.
Turner *v.* Roby, 3 N. Y., 193.
Hall *v.* Murger, 5 Lans, 103.
Stone *v.* Miller, 62 Barb. 430.
1 Smith's L. C. & 2 Phil. on Evid. Supra.

IV. The Court of Bankruptcy is a court of special and limited jurisdiction, in the sense that, except its proceed-

ings show jurisdiction on their face, they are void and questionable collaterally.

Perkins *v.* Proctor, 2 Wilson, 382.
Hills *v.* Mitson, 8 Exch. 750.
Service *v.* Hermann, 1 Johns, 91.
Roosevelt *v.* Kellogg, 20 Johns, 208.
Stevens *v.* Ely, 6 Hill, 607.
Sackett *v.* Andros, 5 Hill, 327.
Maples *v.* Burnside, 1 Denio, 332.
Varnum *v.* Wheeler, 1 Denio, 331.
Coates *v.* Simmons, 4 Barb. 403.
McCormick *v.* Pickering, 4 N. Y. 277.
Turner *v.* Bank of N. A., 4 Dallas, 11.
Hornthall *v.* Collector, 9 Wall, 565.
Miller *v.* U. S., 11 Wall, 299, 300.
Small *v.* Wheaton, 4, E. D. Smith, 306.

V. The adjudication of bankruptcy was made, not by the Court, but by a Register, (*fo.* 26). The Register is a mere officer of the court, with defined and limited powers—not extending to a "disputed adjudication." (*Bank Act, Sec.* 4). Clearly, his jurisdiction is not established by presumptions.

Ruckman *v.* Cowell, 1 N. Y. 507.

VI. A defect of jurisdiction cannot be waived or repaired by consent or act of the parties.

Beach *v.* Nixon, 9 N. Y. 36.
Dudley *v.* Mayhew, 3 N. Y. 9.
McMahon *v.* Raughr, 47 N. Y. 72.
Scott *v.* Sandford, 19 How. U. S. 402.
In re Lady Bryan Mining Co., 4 Bank, Reg. 131.
Broom's Maxims, 129, 131.

VII. Hence, there was never any proceeding in bankruptcy against the New Lamp Chimney Company, never any adjudication of bankruptcy against the Company, and never any proof *in bankruptcy*, of the claim of de-

fendant in error, against the Company. Wherefore Sec. 21, Bankrupt Law, opposed no obstacle to a recovery, and the judgment of N. Y. Supreme Court is unimpeachable.

Second Point.

Assuming the validity of the proceedings in bankruptcy, the fact that defendant in error proved its claim is ineffectual to defeat a recovery thereon.

I. By familiar canons of construction, a statute must be expounded on all its parts; effect must be given to every provision; the intent of the Act must prevail over its letter, and the legislative policy promoted by the adjudications of the Courts.

Broom Comm. 523.

II. The Bankruptcy Act contemplates two capital objects, viz:

First, an equitable division of assets among creditors.

Second, the exoneration of the debtor.

1 Bell's Comm. 8.

III. These objects are accomplished by a *suspension* of action against the bankrupt, pending proceedings, such suspension terminating with the failure of the debtor to obtain his discharge.

If he obtains his discharge the suspension is perpetual.

But the right to pursue the debtor after the Bankrupt Court has administered all his effects, and after termination of the proceedings in bankruptcy, and a denial of discharge, in no way frustrates the policy of the law or interferes with the proceedings of the Bankrupt Court.

IV. In this case there was no discharge because the law peremptorily denies a discharge to the corporation debtor (*Sec.* 37). When judgment below was recovered, the effects were administered, the assignee discharged, the proceedings in bankruptcy determined, and the matter dismissed from the jurisdiction of the Bankrupt Court. (*fo.* 13.)

V. On the construction of plaintiff in error, the policy and the express provisions of the law would be nullified.

1st. The Bankrupt Act attaches an advantage to a discharge, and annexes a penalty to a failure of discharge, (*Secs.* 21, 29, 33), but if the debtor's liability be *extinguished* by proof of claim, then, in effect, he is still exonerated, though his discharge be denied.

2d. The Bankrupt Act offers the reward of a discharge only to the honest debtor, (*Secs.* 29, 33), but if *proof of debt* destroys the liability, the fraudulent bankrupt without a discharge is in as good plight as the upright bankrupt, to whom the law has accorded its coveted exemption.

3d. On principles of public policy, the Bankrupt Act forbids a discharge to a corporation, (*Sec.* 37) but if proof of claim extinguishes it, or perpetually *suspends* its prosecution, *pro tanto*, the corporation is discharged. And the creditor is in this dilemma: If he omit to prove his debt he forfeits his dividend, renounces his right to contest fictitious claims against the Bankrupt, is without standing in the Bankrupt Court, denied opportunity to prove fraud or otherwise to resist the bankrupt's dis-

charge—whereas, if he prove his debt it is gone irretrievably, albeit the Bankrupt fail of his discharge.

4th. The effect of the construction of plaintiff-in-error is to defeat the operation of the bankrupt law; for no creditor will force his debtor into bankruptcy, when, by that very act, he annihilates his claim, with no compensatory benefit, except the possibility of an inconsiderable dividend.

5th. Such construction is repugnant to the policy of the laws of New York. By those laws stockholders are contingently liable, in their own estate, for the debts of the corporation, (*Laws of New York* 1848, *Chap.* 40, *Sec.* 10). But a suit, judgment, and unsatisfied execution against the corporation, are conditions precedent to an action against the stockholders, (*Laws of N. Y.*, 1848, *Chap.* 40, *Sec.* 24). If then, the claim be extinguished by proof in the Bankruptcy Court, no action can be brought nor judgment recovered against the corporation and so the stockholder will escape. Thus, stockholders personally liable have only to procure an adjudication of Bankruptcy against the corporation, which may be done *ex parte* and on their own vote, and this consequence of benefit to themselves and detriment to the creditor ensues—if he omit to prove his claim, they monopolize the assets of the corporation: if he prove his debt their individual liability is gone. Yet the Bankrupt Act, (*Sec.* 37,) declares that no "discharge or allowance shall be granted to any person, officer or member" of a corporation.

6th. Other absurd and mischievous consequences to flow from the construction claimed for plaintiff-in-error will readily occur to the court. We have stated only those which immediately affect our rights and remedies.

Defendant's construction is sustained by authority.

Matter of Robinson, 6 Blatch. C.C. 253.
Matter of Rosenberg, 3 Bene. R. 14.
Matter of Wright, 36 How. Pr. 175.
Matter of Migel, 2 Bank Reg. 153.
Davis *v.* Anderson, 6 Bank Reg. 153.

So a bankrupt will not be delivered from arrest in a civil suit in a State Court if founded on a debt from which a discharge would not release him.

Bank Act, Sec. 26.
In re Kimball, 6 Blatch. C.C. 292.

Third Point.

The claim of defendant in error was not affected by the proceedings in Bankruptcy, and the writ should be discharged, with costs.

~~SAMUEL B. HIGENBOTAM.~~ W. D. Lord

Counsel for Defendant in Error.

Transcript

B

Records

1875

141

Supreme Court of U. States

1st Oct.

667 - End